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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER SENN; JASON  
BEWLEY; JERED FULLEN,  
DISABILITY RIGHTS  
WASHINGTON,  
and JEWELS HELPING HANDS,

Plaintiffs,

v.

CITY OF SPOKANE, a municipal  
corporation; SPOKANE COUNTY, a  
municipal corporation; OZZIE  
KNEZOVICH, in his official capacity as  
Spokane County Sheriff; CRAIG  
MEIDL, in his official capacity as  
Spokane Police Chief,

Defendants.

No. 2:22-cv-254

**DEFENDANTS SPOKANE  
COUNTY AND SHERIFF  
KNEZOVICH REPLY TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY RELIEF**

COMES NOW Defendants SPOKANE COUNTY and SHERIFF OZZIE  
KNEZOVICH (hereinafter "Defendants County") by and through Deputy  
Prosecuting Attorney F. Dayle Andersen replies to replies motion for temporary  
restraining order and declaratory judgment:

## I. INTRODUCTION

Since December of 2021, the City of Spokane and Spokane County have had a group of individuals engaged in an active protest concerning funding for homeless persons in the Spokane area. *See* <https://www.spokesman.com/stories/2022/dec/04/one-year-later-camp-hope-remains-open-spokanes-may/>.

After removing the protest from City Hall the protesters set up an encampment at the location of Ray Streets and Third Avenue in Spokane upon a Washington State Department of Transportation (“WSDOT”) right-of-way property. *See*, <https://www.spokesman.com/stories/2022/sep/22/knezovich-plans-to-clear-camp-hope-by-mid-october/>.

In response to numerous citizens’ complaints concerning property vandalism, thefts, prostitution, public urination, defecation and drug use, the County took action by filing a nuisance complaint against WSDOT concerning the activities taking place at the homeless encampment.

The County sought a motion for preliminary injunction before the Spokane County Superior Court and WSDOT filed reply in opposition to such. In their reply to the County’s motion, as well as in their letter of interest to the court in this matter, WSDOT identifies the individuals present at the encampment as trespassers.

## II. RESPONSE TO PLAINTIFFS’ STATEMENT OF FACTS

1 Over the last year, the City has created low barrier bed space for homeless  
2 individuals at the Trent Regional Assistance Center (“TRAC”) along with services  
3 to address drug and alcohol abuse, veteran’s aid, housing assistance, and mental and  
4 behavioral health services. *See* [https://my.spokanecity.org/news/  
5 releases/2022/08/30/trent-resource-and-assistance-center-set-to-open/](https://my.spokanecity.org/news/releases/2022/08/30/trent-resource-and-assistance-center-set-to-open/).

7 The TRAC is expected to have a total of 450 spaces, including both beds (350)  
8 and floor mat spaces (100), to provide for low barrier shelter within the next week.  
9 [https://www.spokanepublicradio.org/regional-news/2022-11-22/salvation-army-  
10 faces-staffing-challenges-as-city-prepares-to-expand-new-trent-shelter](https://www.spokanepublicradio.org/regional-news/2022-11-22/salvation-army-faces-staffing-challenges-as-city-prepares-to-expand-new-trent-shelter).

11 As result of the opening and operation of the TRAC center, as well as, the  
12 opening of the Catalyst facility operated by Catholic Charities with an additional 100  
13 beds for transitional housing, a surplus of low barriers bed spaces are expected to  
14 exist within the County. [https://www.spokesman.com/stories/2022/dec/05/this-is-  
15 what-we-need-gov-inslee-says-of-catalyst-p/](https://www.spokesman.com/stories/2022/dec/05/this-is-what-we-need-gov-inslee-says-of-catalyst-p/).

17 Following a recent fire at the encampment, as well as helicopter operations, it  
18 has been determined that the encampment currently has 240 individuals residing at  
19 the homeless encampment. *See* Declaration of Chief Brian Schaeffer, Declaration  
20 M. Voigt filed herein.

22 As to the inhabitants on the WSDOT right-of-way, there exists or will exist  
23 sufficient bed space to shelter the individuals currently residing thereupon.

### III. DISCUSSION

In plaintiffs' motion, the inhabitants assert that they reside on the state property at issue with the consent of the state. The letter of interest from the state paints a difference picture. While WSDOT does tolerate the encampment, they do not appear to consent to the occupation, and identifies them as trespassers.

The plaintiffs rely heavily on the *Martin v. Boise*, 920 F.3d 584(9<sup>th</sup> Cir., 2019) and *Johnson v. Grants Pass*, 20-35752 (9<sup>th</sup> Cir., 2022) cases to assert that they possess a constitutional right to the continuing occupation of state owned land. No court cases have provided such an expansive right to homeless individuals.

#### A.1. Plaintiffs Fourth Amendment Invasion Claims

In their brief plaintiffs assert that their Fourth Amendment, right to privacy, has been violated by law enforcement deploying infrared technology to determine the number of inhabitants at the encampment. Plaintiffs rely on *Kyllo v. U.S.*, 533 U.S. 27 (2001), this reliance is misplaced. *Kyllo* involved an infrared search for a marijuana grow located inside a person's home. Here the plaintiffs reside in tents and trailers located on state owned right-of-way land.

The holding in *Kyllo* was based in part on the fact that government's search was performed by the Government "us[ing a] device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively

1 unreasonable without a warrant.” *Id.* at 40. Since the time of *Kyllo* infrared  
2 cameras mounted upon drones have become readily available to the public at large.  
3 *See* [https://www.amazon.com/dp/B086DVCX8V?tag=projectgoprot-](https://www.amazon.com/dp/B086DVCX8V?tag=projectgoprot-20&th=1&psc=1&geniuslink=true)  
4 [20&th=1&psc=1&geniuslink=true](https://www.amazon.com/dp/B086DVCX8V?tag=projectgoprot-20&th=1&psc=1&geniuslink=true). The ability to purchase and use infrared  
5 cameras mounted on drones by the general public significantly erodes the  
6 rationalization for the *Kyllo* holding as any reasonably objective person  
7 understands that such infrared cameras can be and are used commonly.  
8

9 Similarly, in *California v. Ciraolo*, the U.S. Supreme Court held that  
10 observation “within public navigable airspace . . . in a physically nonintrusive  
11 manner . . .” does not constitute an illegal search under the Fourth Amendment. *Id.*  
12 476 U.S. 207, 213, 106 S. Ct. 1809, 1813, 90 L. Ed. 2d 210 (1986). “As a general  
13 rule, the observation of a constitutionally protected area by a government agent  
14 standing in an open field or a public space does not constitute a ‘search’ within the  
15 meaning of the Fourth Amendment.” *United States v. Dellas*, 355 F. Supp. 2d 1095,  
16 1107 (N.D. Cal. 2005), [notes *Kyllo*’s reasoning based on use of a device that ‘is  
17 not in general public use’].  
18

19  
20 There is no actionable Fourth Amendment violation that has occurred in this  
21 matter as the purported entry was performed in public airspace and infrared camera  
22 drones are now commonly available to public, thus diminishing the reasonable  
23 expectation of privacy.  
24

1 **A.2. Plaintiffs Eight Amendment Claims**

2 Unlike the *Martin v. Boise*, 920 F.3d 584(9<sup>th</sup> Cir., 2019) and *Johnson v.*  
3 *Grants Pass*, 20-35752 (9<sup>th</sup> Cir., 2022), in this instance there is no ordinance or  
4 code at issue. The County defendants are not seeking to impose jail sentences or  
5 fines. They are seeking to transition homeless individuals using state property to  
6 available bed spaces. The County defendants, through judicial process, have sought  
7 a determination concerning a continuing nuisance that requires a balancing of  
8 interests between residences and businesses adjacent to the encampment and rights  
9 of the individuals currently identified as trespassers by the property owner  
10 WSDOT. Plaintiffs assert that the individual rights of the trespassers should  
11 surpass those of lawful property owners who continue to suffer the consequences  
12 of the unlawful and unauthorized acts of the camp inhabitants.  
14

15 County defendants transitioning individuals on the property into shelters and  
16 other facilities is consistent with the court's holdings in the *Martin* and *Johnson*  
17 cases. Even assuming for purposes of argument that defendants do not possess  
18 sufficient bed spaces for those individuals subject to a purported sweep by  
19 defendants via law enforcement, this does not mean that defendants can take  
20 absolutely no action. Consistent with both *Martin* and *Johnson*, defendants can  
21 transition individuals from the right-of-way to shelter facilities up until the time  
22 that such bed spaces are filled.  
23

1        Given the current understanding of the population of the encampment,  
2 sufficient bed spaces are or will be available at the time of any action on the part  
3 of the defendants. Were the court to adopt the plaintiffs' argument presented in  
4 their request, in any instance where every single homeless person could not be  
5 placed into a shelter bed the local authorities could take no action in any  
6 circumstances concerning illegal camping on public property. Clearly, this  
7 exceeds the scope and intent to the court's rulings in both *Martin* and *Johnson*.

9        **A.3. Plaintiffs claim based on First Amendment and Fifth Amendment**

10        The continuing trespassing and illegal activities upon state property should  
11 not be considered protected conduct under the first amendment. Defendants assert  
12 that their efforts to transition the encampment inhabitants represent nothing more  
13 than reasonable time, place, and manner restrictions.

15        [E]ven in a public forum the government may impose reasonable restrictions  
16 on the time, place, or manner of protected speech, provided the restrictions  
17 'are justified without reference to the content of the regulated speech, that  
18 they are narrowly tailored to serve a significant governmental interest, and  
19 that they leave open ample alternative channels for communication of the  
20 information.'

21        *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753,  
22 105 L. Ed. 2d 661 (1989).

23        There is no "inherently expressive" aspect involved in the illegal occupation  
24 of state property. *Wong v. Bush*, 542 F.3d 732, 736 (9th Cir. 2008), *citing*, *Rumsfeld*  
*v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 126 S.Ct. 1297,  
1310, 164 L.Ed.2d 156 (2006).

1 None of the proposed actions of defendants Spokane County limits the  
2 plaintiffs right to freely associate or to express their opinions in a reasonable time,  
3 place and manner. Conversely, the admitted criminal activities of the inhabitants  
4 at the encampment continue to have a substantial impact on the adjacent property  
5 owners. The rights of the camp inhabitants do not and should not outweigh the  
6 rights of the neighbors reasonable enjoyment of their property.  
7

8 The County defendants do not plan to arrest or confine any of the individuals  
9 at the encampment. The alleged First Amendment violations purported by  
10 plaintiffs are invalid.  
11

12 There is no property taking alleged, there is no violation of a right to jury  
13 trial, there is no criminal component applicable to this matter. In fact, both the City  
14 and the County have incurred significant expense to provide for the storage of  
15 personal property for any inhabitants of the encampment at the TRAC facility.

16 Plaintiffs argument of guilt by association are nothing more than a  
17 misdirection to this court. The clear relationship between the inhabitants and the  
18 demonstrated substantial increase in criminal activity in the area is demonstrated  
19 by the numerous declarations on file. The argument that there is no evidence that  
20 “a majority of other residents” have not engaged in criminal activity (*See*, Plaintiff  
21 Amended motion, p. 14, ll. 7-9) appears to be an explicit acknowledgement by  
22 plaintiffs that there are individuals from the encampment engaged in criminal  
23  
24



1 activities affecting the neighboring property owners. There is a clear nexus  
2 between the inhabitants of the encampment and significant crime increase  
3 identified in the area. The purported impact to the encampment inhabitants rights  
4 of association and expression should not protect the plaintiffs from the  
5 consequences of their acknowledged illegal conduct.  
6

#### 7 **A.4. Plaintiffs' ADA Complaints**

8 The plaintiffs have also asserted that the actions of the defendants will result  
9 in violations of certain individual's rights based on the ADA. Plaintiffs' provide  
10 mere supposition that some individuals will suffer some unknown consequences  
11 as a result of removing these individuals from an unimproved street lot and into a  
12 shelter where service providers are engaged in providing active assistance to the  
13 inhabitants. It belies reason to argue that disabled individuals are better suited by  
14 remaining out in the elements and having to maneuver through an unimproved dirt  
15 lot. Yet, this is precisely what they have asserted. The proposed actions of the  
16 County of transitioning the camp inhabitants to a permanent building with heat,  
17 water and sanitary facilities will provide improved living conditions for individuals  
18 currently living in a situation that can considered no better than camping.  
19  
20

21 Given the significant actions of the City and County to provide for meals,  
22 beds, storage of personnel property, medical and behavioral health services,  
23  
24

1 addiction treatment, and benefits assistance through the TRAC and related  
2 facilities, plaintiffs position lacks any basis in fact.

3 **B. Plaintiffs have failed to demonstrate irreparable harm**

4 The arguments submitted by plaintiffs fail to demonstrate any irreparable  
5 harm sufficient to grant injunctive relief. The harm suggested by plaintiffs appear  
6 to be solely related to the non-meritorious constitutional violations and to stress an  
7 instability among the inhabitants based on unreasonable fears of being moved to  
8 shelter facilities. Again, plaintiffs fail to recognize or address the conditions that  
9 these individuals are currently residing in and the significant detrimental impact  
10 that this has on their quality of life. The inhabitants are currently living without  
11 heat, with limited sanitary facilities in temporary shelters such a tents, camp  
12 trailers, recreational vehicles and pallet and tarp constructions. At least one of the  
13 trailers at the site has already caught fire and resulted in its total destruction,  
14 highlighting the jeopardy that currently exists for persons residing at the  
15 encampment. *See Schaeffer* declaration. As winter progresses, it is highly likely  
16 that the camp inhabitants will seek to provide themselves with sources of heat  
17 though portable methods. This will likely include portable propane heaters and  
18 wood fires increasing the likelihood of fire hazards.

19 **C. Motion for Declaratory Judgment**

1 The right to declaratory relief is set forth in 28 U.S.C §2201 which provides  
2 that a court “may declare the rights and other legal relations of any interested party  
3 seeking such declaration, whether or not further relief is or could be sought. Any  
4 such declaration shall have force and effect of a final judgment or decree and shall  
5 be reviewable by such.” *Id.* The plaintiffs seek to have the court rule upon shortened  
6 notice and provide declaratory relief with insufficient time or notice for the  
7 defendants to respond. Although the court has the authority to advance a matter and  
8 consolidate under FRCP 65(a)(2), defendants assert that under these conditions the  
9 granting of any such declaratory relief is unnecessary and the necessity to respond by  
10 defendants on such short notice places an unfair burden upon them. Defendants  
11 Spokane County and Sheriff Knezovich, request that the court deny declaratory relief  
12 as requested by plaintiffs herein until such time as the court can be fully briefed on  
13 the facts and law, and denying such relief presents no adverse consequences to the  
14 plaintiffs.

#### 17 IV. CONCLUSION

18 Defendants respectfully request that the court deny the remedies sought by  
19 plaintiffs.

20 DATED this 9<sup>th</sup> day of December 2022.

21 LAWRENCE H. HASKELL

22 Spokane County Prosecuting Attorney

23   
F. Dayle Andersen WSBA# 22966

24 Attorneys for Defendants Spokane County and  
Sheriff Ozzie Knezovich

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.



Ashley E. Musick